IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2004

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THE HONOURABLE MR JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR JUSTICE S. SARDAR ZACKRIA HUSSAIN

A.S.NO.222 OF 1996

Special Deputy Collector
(Land Acquisition)
Tamil Nadu Housing Board Scheme
Madras - 83. ... Appellant

-Vs-

Ranganayagi ... Respondent

Appeal filed against the judgment and decree of the learned Subordinate Judge of City Civil Court, Madras in L.A.O.P.No.35 of 1982 dated 30.10.1991 on his file.

!For Appellant : Mr. V. Karthekeyan, G.A.

^For Respondent : Mr. S.I. Samullah

:J U D G M E N T

(Judgment of the Court was delivered by P. SATHASIVAM, J.)

Aggrieved by the judgment and decree of the VI Assistant Judge, City Civil Court, Madras dated 30.10.1991 made in L.A.O.P.No.35 of 1982 , the Special Deputy Collector (Land Acquisition), Tamil Nadu Housing Board Scheme, Madras has filed the above appeal. 2. An extent of 19 cents of land in T.S.No.127/5 in Arumbakkam village were acquired by the Government for the purpose of laying a road for MMDA. For the said purpose, the Government issued Notification under Section 4(1) of the Land Acquisition Act (Central Act) and the same was published in the Tamil Nadu Government Gazette dated 7.9.1977 . The Land Acquisition Officer after completing the formalities passed an award in Award No.1/79 dated 20.6.1979 and fixed compensation at the rate of Rs.4,000/= per ground. Not satisfied with the said amount, at the instance of the land owner, the matter was referred to the Court below, which resulted in L.A.O.P.No.35 of 1982. Before the court below, the claimant herself has examined as C.W.1 and has not produced any document in support of her claim of higher compensation. On the side of the Referring

Officer, one Somasundaram has been examined as R.W.1 and Exs.R1 to R3 were marked in support of their stand. The learned trial Judge after considering the relevant materials, particularly placing reliance on Exs.R1 and R2 fixed the compensation at the rate of Rs.7,500/= per ground and Rs.1,000/= for shifting charges from Arumbakkam to Thiru-Vi-Ka Nagar. In addition to the above amount, the trial Judge has also granted other statutory amounts including additional compensation at the rate of 12% under Section 23(1-A) of the Land Acquisition Act. Questioning the same, the Special Deputy Collector has filed the present appeal.

3. Heard the learned Government Advocate appearing for the appellant as well as the learned counsel for the respondent.

4. After taking us through the order passed by the learned trial Judge, learned counsel appearing for the appellant has raised the following contentions: i) The compensation fixed at the rate of Rs.7,500/= per ground is excessive and not supported by acceptable evidence. ii) The learned trial Judge committed an error in granting a sum of Rs.1,000/= towards shifting charges, which is not permissible under law. iii) Inasmuch as Section 23(1-A) of the Land Acquisition Act was inserted in the Act only on 24.9.1984, the claimant is not entitled to the said amount and the learned trial Judge committed an error in granting the same.

5. With reference to the first contention, it is true that the claimant has not produced any documentary evidence in support of her claim for higher compensation. However, the learned trial Judge very much relied on the two sale deeds, namely, Exs.R1 and R2 dated 27.9.1974 produced on the side of the Referring Officer, which show that the ground value at the rate of Rs.4,000/=. Taking note of the above aspect and inasmuch as 4(1) Notification was published in the Government Gazette dated 7.9.1977, the learned trial Judge fixed the market value of the acquired land at the rate of Rs.7,500/= . As stated earlier, though the claimant has not produced the documentary evidence in support of her claim, in the light of the details available from Exs.R1 and R2, namely, that neighbouring land was sold at the rate of Rs.4000/= per ground even in 1974, we are of the view that the grant of Rs.7,500/= per ground for the acquired land cannot said to be either unreasonable or excessive. On the other hand, we hold that the same is reasonable and acceptable.

6. Coming to the second contention, it is seen, the trial court taking note of the fact that since the ground and a dwelling house was acquired by the Government, the claimant was forced to shift her residence to elsewhere. According to her, she had to take of her belongings from Arumbakkam to Thiur-vi-ka Nagar for which she spent some amount for transportation etc. Though the learned Government Advocate appearing for the appellant raised an objection regarding the grant of Rs.1,000/=, as rightly pointed out by the learned counsel for the petitioner, it is but proper for the Reference Court to consider the reasonable expenses that is to be incurred because of change of residence due to the acquisition of the dwelling house. Among the sub-clause of Section 23(1-A) of the Land Acquisition Act, it is relevant to note the following clause :" 23. Matters to be considered in

determining compensation(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration. -fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such charge."

7. It is the evidence of the claimant as C.W.1 that since her house (dwelling house) also acquired along with the ground, she has to secure a house at Thiru-vi-ka Nagar and transported all her belongings from Arumbakkam to Thiru-vi-ka Nagar. In the light of the above referred clause, which is the relevant factor, which the Reference Court has to consider while determining compensation, we are of the view that the grant of Rs.1,000/= by the Reference Court is quite reasonable and acceptable. Accordingly, we reject the second contention raised by the learned counsel for the appellant.

8. Coming to the third contention relating to the relief No.4 granted by the Reference Court, namely, grant of 12% towards additional compensation, as rightly pointed out by the learned Government Advocate appearing for the appellant that since the amendment namely, section 1-A was inserted in Section 23 only on 24.9.1984 and of the fact that the award was passed prior to the sale, the claimant is not entitled to the additional compensation. It is also relevant to note that a decision of the Apex Court in KASHIBEN BHIKABAI VS. SPECIAL LAND ACQUISITION OFFICER reported in 2002-2 SCC 605, wherein while considering section 1-A in Section 23 of the Land Acquisition Act, it has been held as follows:" 17. Counsel appearing for the claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under Section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in Union of India v. Filip Tiago De Gama of Vedam Vasco De Gama, w hich held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to 30.4.1982. If the Collector made the award before 30.4.1982 then the additional amount under section 23(1-A) cannot be awarded. The pendency of the acquisition proceedings on 30.4.1982 before the Collector was essential for attracting the benefit under section 23(1-A) of the Act. It was held: (SCC pp. 286-2 87, para21)"

9. It is clear from the above decision that if award is passed by the Collector before 30.4.1982 (on which day the Government presented a Bill before the Parliament) then the additional amount under Section 23(1-A) of the Land Acquisition Act cannot be awarded.

10. In such circumstance, we hold that the claimant is not entitled to the additional amount at the rate of 12% as granted by the Reference Court (Clause-3 of the decree).
11. In the light of what is stated above, we set aside the amount awarded under Section 23(1-A), namely, Clause-3 of the Decree and in other respects, we confirm the judgment and decree of the Reference Court. No costs.

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To
1. The Registrar City Civil Court, Madras (with records).

2. The Record Keeper V.R. Section, High Court, Madras.